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14 April 2016 Our Ref:NK:TM:1409017

Associate to the Hon Justice Ross AO
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: chambers.ross.j@fwc.com.au; amod@fwc.gov.au

Dear Associate,

RE: 4 YEARLY REVIEW – DREDGING AWARD 2010
AM2014/223

We are the solicitors for the Maritime Union of Australia **(MUA).**

We are instructed to provide the following responses to the questions posed in the exposure draft of the above award.

1. **Clause 5.2 - Clause 9.2(a) has been identified as facilitative provisions. However, this provision does not identify which parties may agree. Parties are asked to make submissions on this issue.**

   Clause 9.2(a) is in relation to when breaks can be taken. Any decision to delay a break so that it occurs after 5 hours from the start of a shift should be by agreement between the employer and a majority of employees. This particularly the case when the overriding requirement in clause 9.3 is that employees cannot be compelled to work for more than 5 hours without a break.

2. **Clause 6.3 - The definition of a full-time employee has been amended (removal of the words 'at least') in order to avoid a possible inconsistency with the NES. Parties are invited to make submissions on the issue.**

   The Maritime Union of Australia supports the removal of the words "at least". They do not add to the operation of the definition given the terms of the NES.

3. **Clause 6.5(a)(ii) - Parties are asked to clarify whether clauses 6.5(a)(i) and (ii) should refer to a 'former full-time or part-time employee'**

The Maritime Union of Australia considers that the current provision is clear and that the introduction of the concept of "former" is unnecessary.

4. **Clause 9.3 - Parties are asked to clarify how clause 9.2(c) interacts with clauses 9.2(e) and 9.3.**

Clauses 9.2(e) and 9.2(c) are 2 exceptions to the overriding requirement in clause 9.3. We suggest that clause 9.3 be amended to read:

> *Except as provided in clauses 9.2(e) and 9.2(c), an employee must not be compelled to work for more than five hours without a break for a meal.*

5. **Clause 10.3 - Parties are asked whether a definition for 'aggregated rate' should be inserted to clarify how the 'aggregated wage' is calculated and what components have been incorporated in this rate. This will improve transparency when adjusting rates following the Annual Wage Review.**

The source of proposed clause 10.3 is clause 3 of Part C of the AP787991 - Maritime Industry Dredging Award 1998. Clause 3.1.2 of Part C of the AP787991 - Maritime Industry Dredging Award 1998 provided:

> The aggregate wages prescribed in this Part are minimum rates and have been fixed on the basis that, except where otherwise provided in the award, they take account of all aspects and conditions of employment both general and Particular and incorporate the dredging industry allowance.

The Maritime Union of Australia proposes that a new definition be inserted into schedule D in the following terms:

> **Aggregate rate** means the minimum rate that has been fixed on the basis that, except where otherwise provided in the award, it takes account of all aspects and conditions of employment both general and particular and incorporates the dredging industry allowance.

6. **Clause 11.2(h)(ii) - Parties are asked to clarify whether the allowance in clause 11.2(h)(ii) is paid daily or weekly?**

The allowance is from the Maritime Industry Dredging Award 1998. That award does not state whether the allowance is paid daily or weekly. Given the rate for a second cook should be less than that paid to the Chief Cook ($55.15 per week) the allowance of $39.35 for the second cook should be paid weekly.

7. **Clause 11.2(j)(i) - Parties are asked to consider whether the references to the Navigations Act 1912 in clauses 11.2(j)(ii) and (v) should be updated to the relevant clauses of the Navigations Act 2012?**

   Yes they should. In clause 11.2(j)(ii) the relevant references should be sections 68, 69, 70 and 71 of the *Navigation Act 2012*. In addition the reference in clause 11.2(j)(ii) to the *Seamen's Compensation Act 1974* should be updated to refer to the *Seafarers Rehabilitation and Compensation Act 1992*(Cth).

8. **Clause 11.3(b)(iv) - Parties are asked to clarify whether clause 11.3(b)(iv) should refer to clause 11.3(b)(ii) as per clause 12.4 of the *Dredging (AWU) Award 1998* (AP778702)**

   In the Dredging (AWU) Award 1998 the employer requirement to reimburse the reasonable cost of protective clothing and equipment does not apply where the employer supplies the protective clothing and equipment. That is the same in the *Marine Engineers (Non-Propelled) Dredge Award 1998* (Clause 12) and the Maritime Industry Dredging Award 1998 (Clause 12).

   This award should maintain that position. This should be implemented by deleting the reference to "clause 11.3(b)(ii)" in clause 11.3(b)(iv) and inserting in lieu a reference to "clause 11.3(b)(iii)"

9. **Clause 13.3 - The shiftwork 'penalties' in the *Dredging Industry Award 2010* were based on pre-reform shift allowances and expressed as a % of the ordinary rates. The rates in clause 13.3 are currently being treated as wage-related allowances and adjusted accordingly – see Schedule B—Summary of Monetary Allowances.**

   The current modern award defines the standard rate as the minimum weekly rate for the classification of able seaman. The exposure draft has used the term 'hourly standard rate' for the allowances in 13.3 to reflect the current entitlement.

   The parties should consider whether it is more appropriate to convert these rates to penalties based on an employee's ordinary hourly rate consistent with the pre-reform award.

   The Maritime Union of Australia does not consider this is necessary.

10. **Clause 14 - Parties are asked if the definition of shiftworker in Schedule E applies for the purpose of the NES**

    Schedule E defines a shiftworker to mean "an employee who works shiftwork in accordance with this award as part of a two or three shift system." The hours of work for a shiftworker are set out in clause 8.2(b) and consist of 12 hour shifts for 7 days for a week followed by a 12 hour shifts for 6 days for a week. This work pattern should be used for the purpose of the NES.

11. **Clause C.3.3(c) - Parties are asked to identify "*any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997*" that they consider should not be covered by this Schedule.**

    We are not aware of a training program that should not be covered by this Schedule.

Yours faithfully,
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